

NO. 45044-5

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Appellant,

v.

D.J.C.,
Respondent.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE GORDON L. GODFREY, JUDGE

CROSS-APPEAL BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

Appellant accepts Respondent's Assignments of Error as stated.

II. STATEMENT OF CASE

Appellant accepts Respondent's Statement of the Case as stated with the following exception. Respondent noted that the Statement of Defendant on Plea of Guilty did not list sex offender registration as a consequence of pleading guilty. Brief of Respondent 8. However, the plea form states:

**[C] OFFENDER REGISTRATION FOR SEX OFFENSE OR
KIDNAPPING OFFENSE**

Because this crime involves a sex offense, or a kidnapping offense involving a minor, or sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation, or conspiracy to commit a sex offense or a kidnapping offense involving a minor, as defined in RCW 9A.44.128, I will be required to register where I reside, study or work.

CP 15-16.

III. ARGUMENT

(1) D.J.C.'S PLEA WAS KNOWING, VOLUNTARY AND INTELLIGENT AND TRIAL COUNSEL WAS NOT INEFFECTIVE BECAUSE D.J.C. WAS ADVISED THAT SEX OFFENDER REGISTRATION WAS A MANDATORY SENTENCING REQUIREMENT.

While an offender does not have to be informed of all possible collateral consequences of pleading guilty to an offense, he does need to be made aware of all direct consequences of a guilty plea. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). A direct consequence is one having a definite, immediate and largely automatic effect on the range of punishment. *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996).

As Respondent has pointed out, the Supreme Court held in *A.N.J.* that sex offender registration is a direct consequence of pleading guilty to a sex offense. *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010).

However, in the Statement of Defendant on Plea of Guilty, it states:

[C] OFFENDER REGISTRATION FOR SEX OFFENSE OR
KIDNAPPING OFFENSE

Because this crime involves a sex offense, or a kidnapping offense involving a minor, or sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation, or conspiracy to commit a sex offense or a kidnapping offense involving a minor, as defined in RCW 9A.44.128, I will be required to register where I reside, study or work.

CP 15-16.

During the colloquy, the court asked D.J.C. if he went through the plea form with his attorney and if he understood the plea form. RP 3.

D.J.C. responded he did to both of those questions. RP 3. The court then asked D.J.C. if he had any questions and he replied, “No, sir.” RP 3.

Furthermore, the plea form states, "I have read or someone has read to me everything printed above and I understand it in full. I have been given a copy of this statement. I have no more questions to ask the judge." CP 18. The Respondent then signed the form, which clearly indicated that sex offender registration was mandatory.

The case at hand is unlike *A.N.J.* because in this case D.J.C. was clearly advised he would have to register as a sex offender if he entered a guilty plea to Communicating With a Minor for Immoral Purposes.

(2) D.J.C.'S PLEA WAS NOT KNOWING, VOLUNTARY AND INTELLIGENT BECAUSE HE WAS NOT ADVISED OF AN ESSENTIAL ELEMENT OF THE CRIME.

Appellant agrees that in order for a plea to be knowing, voluntary and intelligent, the defendant must know all of the elements of the offense. *In re the Pers. Restraint of Keen*, 95 Wn.2d 203, 622 P.2d 360 (1980).

Appellant concedes that in the case at hand the element "minor" was not included in the element section of the plea form. CP 13. This could have been cured because the Amended Information clearly sets out the elements of the crime. CP 3, *Keene* 95 Wn.2d at 208. Unfortunately, there is no evidence in the record that D.J.C. was given a copy of the Amended Information. Further, D.J.C. was not arraigned on the Amended Information.

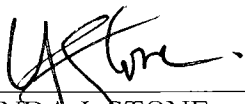
IV. CONCLUSION

Since Appellant conceded that the Respondent's plea was not knowing, voluntary and intelligent, this matter should be remanded to the trial court where D.J.C. may choose to withdraw his plea. Appellant requests when the matter is remanded, it be ordered that the new hearing be held in front of a different judge.

Finally, Appellant respectfully requests this court make a ruling on the initial appeal of whether the trial court had the authority to not require sex offender registration on this matter, as this will likely resurface on remand. Respondent conceded that the court did not have authority to not enforce the registration requirement, stating, "It is obvious from the record that trial counsel was unaware that sex offender registration could not be waived under the current statutory scheme. RCW 9A.44.140; .143." Brief of Respondent 24.

DATED this 29 day of May, 2014.

Respectfully Submitted,

By: 
LYNDAL STONE
Deputy Prosecuting Attorney
WSBA#38749

LJS/jfa

GRAYS HARBOR COUNTY PROSECUTOR

May 29, 2014 - 2:24 PM

Transmittal Letter

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